

CEQA: Establishing the Administrative Record

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Stella Adler Theater

Michelle C. Messinger – Historian II
Office of Historic Preservation

California Environmental Quality Act



CEQA: A Brief Overview



CEQA

- Enacted in 1970, modeled after NEPA
- Law was conceived to require public agencies decision makers to **document & consider** the environmental implications of their actions
- Applies to **all** governmental agencies at **all** levels in California



CEQA Act

- Authority is codified in California Public Resources Code (PRC) Statute §§ 21000-21177
- CEQA Guidelines 14 Cal. Code Regs. § 15000 et. seq



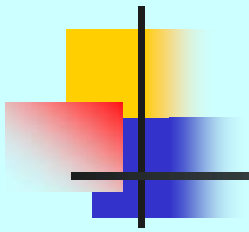
Purpose of CEQA

- **Protection of the Environment**
- Was enacted in response to the well-documented failure of state and local governments to consider fully the environmental implications of their actions

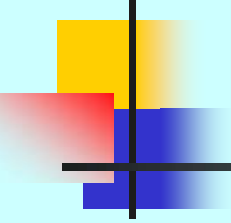


Four General Principles

- 1. **Information** : Inform decision makers & public about significant environmental effects of proposed activities
- 2. **Identification**: Identify ways that environmental damage can be avoided or significantly reduced

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- **3.Prevention:** Prevent significant, avoidable damage to the environment by requiring changes in projects through use of alternatives or mitigation measures when the agency finds changes to be feasible
 - **4. Disclosure:** Disclose to the public the reasons why an agency approved the project in the manner the agency chose if significant environmental effects are involved (Code § 21001 (d); Guidelines §15002)

CEQA has a

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- **Substantive** Mandate; it is not just procedural
 - Public agencies **must** deny approval of projects with significant environmental effects if “there are feasible alternatives or mitigations measures” that can substantially lessen or avoid those effects



Enforcement of CEQA

CEQA is a Self-executing
statute

What does that mean?



Self-Executing means

- Public agencies are entrusted with compliance of CEQA and its provisions are enforced, as necessary, **by the public** through **litigation** and the threat thereof.
- Who can/does sue: private citizens, organizations, and public agencies



CEQA applies to **Discretionary** projects

Project: any activity which may cause either a direct or indirect physical change in the environment



Overview of CEQA Process

CEQA process begins:

Phase 1: Preliminary Review

Phase 2: Initial Study

Phase 3: **EIR** or **ND**

Completes CEQA process



CEQA Exemptions

- Common Statutory Exemptions
 - Ministerial or Emergency Projects
- Categorical Exemptions
 - 33 Classes created in the CEQA Guidelines
- No public review/comment is required for adoption of exemption
- Notice of Exemption
 - Optional filing starts 35-day statute of limitations



Exemption for Historical Resources

- Class 31, Exemption per **§ 15331**:
- Projects must conform to the Secretary of Interior's Standards and are
- Limited to repair, rehab, restoration, preservation, reconstruction, maintenance
- Section **§ 15300.2**
- **But** an Exception precludes use of Class 31 for:
- Substantial adverse change in significance of historical resources
- Reasonable probability the project will have a significant effect on the environment



Purpose of Initial Study

- If Project is not Exempt, then an Initial Study (IS) must be prepared
- IS Purpose:
 - Facilitate early environmental assessments
 - Decide whether to prepare ND, MND, or EIR
 - IS is the supporting decision for ND or EIR
 - Avoid unnecessary EIRs by mitigating impacts
 - Focus an EIR on significant effects



Types of Environmental Impacts

- Direct Effects
- Reasonably foreseeable indirect effects
- Growth-inducing effects
- Cumulative effects



Threshold for Preparing EIRs: Fair Argument Standard

**An EIR must be prepared when it
can be:**

- Fairly argued,
- Based on substantial evidence,
- In light of the whole record,
- that a project may have a significant environmental effect.



What is Substantial Evidence?

Substantial Evidence is:

- Facts
- Fact-related reasonable assumptions-predicated on facts
- Expert opinion supported by facts

Substantial Evidence is not:

- Argument
- Speculation
- Unsubstantiated opinion or narrative
- Clearly inaccurate or erroneous information
- Socioeconomic impact not linked to physical environmental impact



Negative Declaration (ND)

- Basis for “Neg Dec” (ND):
- No substantial evidence that project may result in a significant effect
 - Initial study (IS)
 - Supporting reports/studies
 - Other evidence in record
 - Neg Dec is the agency’s finding; the IS supports that finding



Basis for a Mitigated Negative Declaration (MND)

- **Initial Study shows potentially significant impacts, BUT:**
 - Revisions in project plans agreed to by applicant before public review would mitigate to below level of significance
 - No substantial evidence in record of a significant effect of revised project
 - No substantial evidence that mitigation will be inadequate



EIR

- When required: Project may have a significant impact on the environment
 - EIR must disclose:
 - project description, environmental setting
 - impacts and mitigations
 - direct, indirect, cumulative, growth-inducing
 - Alternatives to project, including no-project
- Legal Standard: Good-faith effort at full disclosure; perfection not required



The Parts of the EIR Process

- Initial Study
- Notice of Preparation
- Scoping
- Draft EIR Review
- Responses
- Recirculation
- Certifying the Final EIR
- Findings



Lead Agency Response to Comments

- **Must** respond in Final EIR to comments received during DEIR public review period and extensions
- **Must** consider and may respond to late comments
- **Must** provide detailed explanations supporting position of significant disputed issues
- **Must** make good faith, reasoned responses, not unsupported conclusory statements



EIR Certification

A Lead Agency must certify that:

- Final EIR has been completed in compliance with CEQA
- Final EIR was presented to decision-making body and reviewed and considered by decision-making body prior to approving project
- Final EIR reflects Lead Agency's independent judgment and analysis



Three Possible CEQA Findings

- Project has been changed to avoid or substantially reduce impact magnitude
OR
- Changes to project are within another agency's jurisdiction and such changes have been or should be adopted
OR
- Specific economic, social, legal, technical, or other considerations make mitigation measure or alternative infeasible



Statement of Overriding Considerations

- Is used when approving a project with unavoidable significant impacts
- Includes specific, written statement of reasons supporting approval: economic, legal, social, technological, or other benefits
- Must be supported by substantial evidence in record
- Should be mentioned in NOD



Comment Period

- Lead Agency must consider comments prior to acting on project
- Comments can be submitted during public review period
 - Draft ND or MND: 20- or 30-day period
 - NOP (EIR): 30-day period
 - EIR: 30- or 45-day (60-day) period
- The review period is not the end of the comment period
 - *comments may be submitted until the final action on project*



Notice of Determination

- To be filed within 5 working days of project approval (CEQA Guidelines §§ 15075 and 15094)
- Starts clock (30-days) on Statute of Limitations for CEQA challenge
 - (CEQA Guidelines §§ 15075, 15094 and 15112)
- If NOD was not filed, then statute of limitations is 180 days (CEQA Guidelines § 15062)



Administrative **Record** is

- The **Cornerstone of Judicial Review**
- The **Record** tells the story of the lead agency's proceedings in connection with CEQA.....



Contact Information

Michelle C. Messinger
Historian II – CEQA Coordinator
Local Government Unit
Office of Historic Preservation (OHP)
(916) 653-5099
mmessinger@parks.ca.gov